

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

BAYER HEALTHCARE AG,	)	
ALCON, INC., and ALCON	)	
MANUFACTURING, LTD.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 06-234-SLR
	)	
TEVA PHARMACEUTICALS USA, INC.,	)	
	)	
Defendant.	)	
_____	)	

BAYER HEALTHCARE AG and BAYER	)	
PHARMACEUTICALS CORPORATION,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 07-195-SLR
	)	
TEVA PHARMACEUTICALS USA, INC.,	)	
	)	
Defendant.	)	
_____	)	

**JOINT MOTION TO CONSOLIDATE ACTIONS**

Plaintiffs Bayer HealthCare AG (“BHC”), Bayer Pharmaceuticals Corporation (“BPC”), Alcon, Inc. and Alcon Manufacturing, Ltd. (collectively, “Alcon”), and Defendant Teva Pharmaceuticals USA, Inc. (“Teva”) hereby jointly move to consolidate for all purposes *Bayer HealthCare AG, Alcon, Inc., and Alcon Manufacturing, Ltd. v. Teva Pharmaceuticals USA, Inc.*, No. 06-234-SLR and *Bayer Healthcare AG and Bayer Pharmaceuticals Corporation v. Teva Pharmaceuticals USA, Inc.*, No. 07-195-SLR, which are currently pending before the Court. It is respectfully suggested that consolidation of these actions will expedite resolution of the two

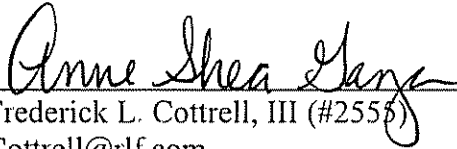
cases, eliminate unnecessary duplication in discovery, and most efficiently utilize judicial resources, with no undue inconvenience, delay, or expense to any party. Consolidation should be ordered for the following reasons:

1. Both Case No. 06-234-SLR and Case No. 07-195-SLR are actions for patent infringement under the Hatch-Waxman Act;
2. BHC is a plaintiff in both actions and Teva is the defendant in both actions;
3. Both suits involve claims of infringement by Teva of the same two U.S. patents owned by BHC, U.S. Patent Nos. 4,990,517 (“the ’517 patent”) and 5,607,942 (“the ’942 patent”), based on Teva’s filing of Abbreviated New Drug Applications seeking to sell drug products containing moxifloxacin, with Case No. 07-195-SLR involving moxifloxacin tablets and No. 06-234-SLR involving an ophthalmic eye drop solution containing moxifloxacin. Teva claims that the pertinent claims of these two patents are invalid and/or not infringed;
4. There will be significant overlap of the discovery taken, both in terms of document production and fact and expert witness depositions, as well as significant overlap in the issues presented at trial, in the two cases;
5. Therefore, it would be most efficient and economical for discovery and trial of Case No. 06-234-SLR and Case No. 07-195-SLR to be consolidated for all purposes; and
6. The parties agree that Case No. 07-195-SLR should proceed on the schedule already set forth in the Scheduling Order from Civil Action No. 06-234-SLR.

Accordingly, pursuant to Federal Rule of Civil Procedure 42(a), the parties hereby request that the Court enter an order, substantially in the form attached hereto as Exhibit A to consolidate Case No. 06-234-SLR and Case No. 07-195-SLR for all purposes, and further

request that the two cases be litigated and decided according to the Scheduling Order entered in

Case No. 06-234-SLR (D.I. 21).



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Dated: April 27, 2007

*/s/ Richard D. Kirk*

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Dated: April 27, 2007

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Defendant.	)	
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BAYER HEALTHCARE AG and BAYER	)	
PHARMACEUTICALS CORPORATION,	)	
	)	
Plaintiffs,	)	
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v.	)	Civil Action No. 07-195-SLR
	)	
TEVA PHARMACEUTICALS USA, INC.,	)	
	)	
Defendant.	)	
_____	)	

**ORDER**

Upon consideration of the Consent Motion to Consolidate Actions, **IT IS HEREBY ORDERED** that:

1. The above-captioned actions shall be consolidated for all purposes including all pretrial and trial matters;
2. Papers submitted in this consolidated litigation shall be filed and docketed solely in C.A. No. 06-234-SLR; and

3.. All filings in this consolidated litigation shall bear the following consolidated

caption:

BAYER HEALTHCARE AG,	)	
ALCON, INC., and ALCON	)	
MANUFACTURING, LTD.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 06-234-SLR
	)	
TEVA PHARMACEUTICALS USA, INC.,	)	
	)	
Defendant.	)	

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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Hon. Sue L. Robinson, U.S.D.J.

**CERTIFICATE OF SERVICE**

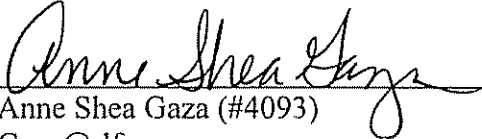
I hereby certify that on this 27th day of April 2007, I caused a true and correct copy of the foregoing Consent Motion to Consolidate Actions to be served on Defendant Teva Pharmaceuticals USA, Inc. by the manner indicated below:

**VIA HAND-DELIVERY:**

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